

Claimant raised the following issues on review: (1) whether the claimant's accidental injury arose out of and in the course of employment with the respondent; (2) whether the respondent received proper notice; (3) whether the Administrative Law Judge erred in denying the claim based on failure to make timely written claim pursuant to K.S.A. 44-520a; (4) whether the Administrative Law Judge erred in his finding of the nature and extent of disability sustained by the claimant as a result of the accident; (5) whether the Administrative Law Judge erred in denying payment of claimant's medical expenses

incurred; and, (6) whether the Administrative Law Judge erred in denying the claimant's entitlement to unauthorized and future medical.

The respondent raised the following issues on review: (1) whether the claimant filed a timely written claim pursuant to K.S.A. 44-520a; (2) which employer is liable for claimant's alleged injuries; (3) nature and extent of claimant's disability; and, (4) whether costs of certain depositions should be apportioned to the claimant.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition to the stipulations of the parties, the Board makes the following findings of fact and conclusions of law:

The Administrative Law Judge's Award contains detailed findings of fact and conclusions of law. It is not necessary that those be repeated herein. The Board adopts those findings and conclusions as its own.

The Administrative Law Judge concluded claimant gave timely notice of accident. When claimant became aware his carpal tunnel was probably caused by work he notified his union representative. The union representative advised claimant to notify personnel in human resources. Claimant then advised Jody Smallwood, who worked in the human resources office. Claimant testified that is where a work-related accident was usually reported. It should be noted that all of these events occurred as employee's papers were being processed on the final day the plant was open. Although Ms. Smallwood advised claimant she could not handle the claim and advised him to contact the safety officer, nonetheless, claimant had appropriately notified respondent. Moreover, claimant attempted to follow up not only with the safety officer but also with the company's president. The Board agrees with and adopts the Administrative Law Judge's finding claimant gave timely notice.

The dispositive issue is whether the claimant gave timely written claim. Claimant alleged a series of work-related accidents from January 1999 through June 17, 1999. For purposes of award, the Administrative Law Judge found claimant's date of accident to be June 17, 1999, the last day he worked for respondent. That finding was not disputed. Therefore, for the purpose of determining whether claimant's written claim was timely served, claimant's accident date will be treated as June 17, 1999.

K.S.A. 44-520a(a) (Furse 1993) provides for written claim to be served within 200 days of the accident date. Under certain circumstances, the time period for serving written claim upon the employer may be extended to one year. K.S.A. 44-557(a) (Furse 1993) requires every employer to report accidents of which it has knowledge within 28 days of receiving such knowledge. Subsection (c) of K.S.A. 44-557 (Furse 1993) provides:

(c) No limitation of time in the workmen's compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced before the director within one (1) year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.

The parties agree that written claim was provided respondent on May 9, 2000. Written claim was served more than 200 days but less than one year from claimant's date of accident. Claimant argues that he gave timely notice of accident and respondent failed to file a report of accident with the Division of Workers Compensation. Accordingly, claimant contends the time for serving written claim was extended by K.S.A. 44-557 (Furse 1993) to one year.

Respondent argues that because claimant was not incapacitated by the alleged accident, it was not required to file a report of accident and the provisions for extending the time for serving written claim are not applicable.

The Board agrees that claimant has not met his burden of proving that respondent was required to file an accident report and failed to do so. K.S.A. 44-557(a) (Furse 1993) provides:

(a) It is hereby made the duty of every employer to make or cause to be made a report to the director of any accident, or claimed or alleged accident, to any employee which occurs in the course of the employee's employment and of which the employer or the employer's foreman has knowledge, which report shall be made upon a form to be prepared by the director, within twenty-eight (28) days, after the receipt of such knowledge, if the personal injuries which are sustained by such accidents, are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

The record does not establish that claimant was incapacitated "from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained." Claimant testified he never missed time from work nor was he taken off work because of his hand problems.

Claimant notes that he had occasionally left work to seek medical treatment for his hand complaints. However, when claimant was seeking treatment neither he nor respondent were aware of any work-related connection for the treatment. As respondent did not have notice of a work-related accident it could not be expected to file an employer's

report of accident at that time. Under such circumstance the occasional absences for doctor's appointments do not equate to incapacity. Moreover, claimant was never placed on restrictions and, as previously noted, was not taken off work.

Because claimant was not incapacitated for more than the remainder of the day, turn or shift on any alleged date of accident, the employer was not required to file a report of accident with the Director and the provisions of K.S.A. 44-557(c) (Furse 1993) do not apply to this claim. Accordingly, the provisions of K.S.A. 44-557(c) (Furse 1993) extending the time period for serving written claim cannot be utilized. Claimant failed to serve written claim within 200 days as required by K.S.A. 44-520a (Furse 1993), and his claim is, therefore, time-barred.

Lastly, respondent raised the issue of payment for certain depositions because the witness was deposed twice. Claimant noted that such additional testimony was necessary for rebuttal. A review of the file fails to indicate that such testimony was redundant and the Administrative Law Judge's assessment of costs to the respondent is affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Robert H. Foerschler dated May 15, 2001, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Attorney for Claimant
Stephen P. Doherty, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Workers Compensation Director